

STATE OF MICHIGAN
CIRCUIT COURT FOR THE 30TH JUDICIAL CIRCUIT
INGHAM COUNTY

KEN ROSS, COMMISSIONER OF THE OFFICE
OF FINANCIAL AND INSURANCE
REGULATION,

Petitioner,

No. 10-397-CR

v

HON. WILLIAM E. COLLETTE

AMERICAN COMMUNITY MUTUAL
INSURANCE COMPANY,

Respondent.

Christopher L. Kerr (P57131)
Allison M. Dietz (P73612)
Assistant Attorneys General
Attorneys for Petitioner
Corporate Oversight Division
P. O. Box 30755
Lansing, MI 48909
(517) 373-1160

**EX PARTE PETITION FOR APPROVAL OF LUCY R. BENHAM PLLC'S
COMPENSATION AS OUTSIDE REAL ESTATE LEGAL COUNSEL**

Ken Ross, Commissioner of the Office of Financial and Insurance Regulation ("OFIR"), as Rehabilitator of American Community Mutual Insurance Company (the "Rehabilitator"), by and through his attorneys, Michael A. Cox, Attorney General, and Christopher L. Kerr and Allison M. Dietz, Assistant Attorneys General, petitions this Court pursuant to MCL 500.8114(1) to approve the compensation to be paid to the law firm of Lucy R. Benham PLLC in connection with its employment as outside real estate legal counsel for American Community Mutual

Insurance Company ("American Community"). In support of this Ex Parte Petition, the Rehabilitator states as follows:

1. On April 8, 2010, this Court entered an Order placing American Community into Rehabilitation and appointing the Commissioner as the Rehabilitator of American Community.

2. MCL 500.8114(1) authorizes the Rehabilitator to employ such assistants as he considers necessary to carry out his functions as Rehabilitator.

3. MCL 500.8114(1) further authorizes the Rehabilitator to fix, with the Court's approval, the compensation of any such employed assistants.

4. Pursuant to MCL 500.8114(1), any person appointed by the Rehabilitator shall serve at his pleasure.

5. On August 3, 2010, this Court entered an Order approving the compensation to be paid to Summit Commercial, LLC ("Summit") as the exclusive real estate broker for the sale of the property and building owned by American Community, which is located at 39201 Seven Mile Road, Livonia, Michigan (the "Property").

6. In its role as exclusive real estate broker, Summit has negotiated a tentative sale of the Property to Agree Development, LLC ("Agree"), which is evidenced by the attached Letter of Intent ("LOI") between American Community and Agree.¹

7. The Letter of Intent provides that American Community and Agree "shall work in good faith to agree upon and execute a Purchase Agreement within 20 business days following the parties' execution of" the LOI.² The LOI was fully executed by the parties on November 12, 2010; thus, time is of the essence relative to drafting, reviewing, negotiating, and finalizing the Purchase Agreement.

¹ See Exhibit A, Letter of Intent.

² *Id.* at p 2.

8. To assist with negotiating the Purchase Agreement and closing the sale of the Property, the Rehabilitator has retained the law firm of Lucy R. Benham, PLLC ("Benham") to act as outside real estate counsel. The Retainer Agreement ("Agreement") entered into between Benham and the Rehabilitator provides that Benham will perform legal services related to the sale of the Property, including but not limited to reviewing the purchase documents and, if requested, attending the closing.³

9. Benham is well-qualified to provide the real estate attorney services referenced above and more fully described in the Agreement. Benham is located in Royal Oak, Michigan and specializes in, among other things, real estate and commercial transactions.⁴ Benham's principal, Lucy R. Benham, has nearly 25 years of legal experience.⁵ She has also previously worked with James Gerber, OFIR's Director of Receiverships and Special Deputy Rehabilitator for American Community, as outside real estate counsel in connection with The Wellness Plan receivership proceedings.

10. The Rehabilitator has fixed Benham's compensation as outside real estate counsel pursuant to the terms of the attached Agreement,⁶ and requests the Court to approve this compensation pursuant to MCL 500.8114(1). Specifically, Benham will bill on an hourly basis for all services provided, including travel time, at the following hourly rates:

Attorney: \$295.00 per hour

Legal assistants/Law Clerks: \$75.00 per hour⁷

³ See Exhibit B, Retainer Agreement.

⁴ See Exhibit C, Lucy R. Benham Curriculum Vitae.

⁵ *Id.*

⁶ See Exhibit B.

⁷ *Id.*

11. The Agreement further fixes the additional costs that Benham can include in its billing for legal services rendered.⁸ Such costs include: expressmail/overnight service, online legal research, long-distance telephone calls, postage, outside couriers, travel-related expenses, conference call charges, and charges for administrative agency and court-related services, such as filing fees and transcription services.⁹ These items will be billed in the amount actually invoiced to Benham for the respective service.¹⁰ Finally, under the Agreement, Benham can bill for photocopies at a rate of \$0.10 per page and outgoing facsimiles at a rate of \$1.00 per page.¹¹

12. Pursuant to MCL 500.8114(1), Benham shall serve at the pleasure of the Rehabilitator, subject to the terms of the Agreement. The Agreement provides for termination by the Rehabilitator at any time upon written notice, while Benham may terminate upon 15 days' written notice. In the event of termination, Benham is entitled to collect any incurred but unpaid fees and costs for legal services performed.

13. Pursuant to MCL 500.8114(1) and paragraph 15 of the Rehabilitation Order, and upon the Court's approval, Benham's compensation shall be paid from the available funds and assets of American Community. Although it is not expected to occur, in the event that American Community does not possess sufficient cash or liquid assets to pay Benham's compensation, the Rehabilitator may advance (but is not required to advance) the necessary funds, and such amounts shall be repaid out of the first available money of American Community.

14. The Rehabilitator and Special Deputy Rehabilitator selected Benham as outside real estate legal counsel based on the firm's expertise, work quality, and Ms. Benham's prior, positive working relationship with Mr. Gerber.

⁸ See Exhibit B.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

15. The Rehabilitator and Special Deputy Rehabilitator James Gerber have determined that Benham's employment as outside real estate counsel, together with the compensation to be paid Benham in exchange for its services, are necessary and appropriate for the effective and efficient administration of this rehabilitation proceeding and will assist in providing the maximum protection to creditors, policyholders, and the public.

16. Because time is of the essence in negotiating the Purchase Agreement, the Special Deputy Rehabilitator has instructed Benham to commence providing legal services in connection with the sale of the Property, which Benham has done. Thus, the Rehabilitator also requests the Court to retroactively approve the payment of any compensation earned by Benham prior to the date that this Petition is granted.

17. As provided in the Court's August 3, 2010 Order approving Summit's compensation, the Purchase Agreement, if and when finalized and executed, is expressly subject to this Court's final approval. Accordingly, this petition involves the compensation of Benham only, and the Rehabilitator will file a separate petition seeking the Court's approval of any Purchase Agreement that the parties ultimately execute.

18. Providing personalized notice of this Ex Parte Petition and any resulting Order to all parties that may have an interest in this matter is impossible at this time because there has been no claims submission or other process to identify such parties. Moreover, attempting to identify and personally notify parties in interest would be time-intensive and costly to American Community's Rehabilitation Estate. For this reason, the Rehabilitator requests that this Court authorize and ratify service of this Ex Parte Petition and any resulting Order by posting electronic copies on the OFIR website, www.michigan.gov/ofir, under the section "Who We Regulate" and the subsection "American Community." Service in this manner is reasonably

calculated to give interested parties actual notice of these proceedings and is otherwise reasonable under the circumstances.

WHEREFORE, Ken Ross, Commissioner of the Office of Financial and Insurance Regulation, as Rehabilitator of American Community Mutual Insurance Company, respectfully requests this Court to approve the compensation to be paid to Lucy R. Benham PLLC, as fixed by the Rehabilitator in the attached Retainer Agreement. Because time is of the essence, the Rehabilitator further requests the Court to retroactively approve the payment of any compensation earned by Benham prior to the date that this Petition is granted. Finally, the Rehabilitator requests the Court to authorize and ratify service of this Ex Parte Petition and any resulting Order by posting electronic copies on the "American Community" section of OFIR's website.

Respectfully submitted,

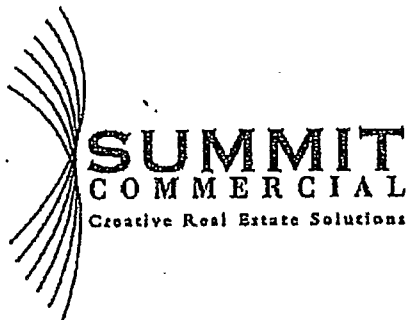
Michael A. Cox
Attorney General

A handwritten signature in black ink, appearing to read "Christopher L. Kerr", is written over the typed name.

Christopher L. Kerr (P57131)
Allison M. Dietz (P73612)
Assistant Attorneys General
Michigan Department of Attorney General
Corporate Oversight Division
Attorneys for Petitioner
P.O. Box 30755
Lansing, Michigan 48909
(517) 373-1160

Dated: December 2, 2010

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7700 Second St.,
Suite 300
Detroit, MI 48202

Phone: 313-872-1300
Fax: 313-872-6040
www.summitcommercialllc.com

November 8, 2010

Armada Real Estate Services
7001 Orchard Lake Rd. Suite 110
West Bloomfield, MI 48322
Attn: Darryl Goodwin
Via e-mail: dgoodwin@armadarealestate.com
Dear Mr. Goodwin,

RE: Counter Offer for 39021 Seven Mile Rd., Livonia, MI

My client, American Community Mutual Insurance Co. has reviewed your client's latest offer dated November 2, 2010 and provides this non-binding letter of intent as an official response and counter offer to your proposal regarding the property located at 39021 Seven Mile Rd., Livonia, MI.

Property:	The land and premises located at the southeast corner of Seven Mile Rd. and Haggerty Rd. in the City of Livonia, County of Wayne, Michigan, with a land area of +/- 409,695 square feet, and being Tax Parcel ID # 026-99-0001-000. The final land area will be reflected in title work provided by Seller and highlighted on a survey to be obtained by Purchaser.
Seller:	American Community Mutual Insurance Co.
Purchaser:	Agree Development, LLC, on behalf of an entity to be formed
Purchase Price:	Four Million Six Hundred Thousand and 00/100 Dollars (\$4,600,000.00). No Financial Contingency will be requested by Purchaser.
Deposit:	Purchaser shall place \$150,000.00 (the "Deposit") in escrow with Liberty Title Commercial Title Agency within 5 business days following the Effective Date. The Deposit will be refundable during the Due Diligence Period, except that \$50,000.00 of the Deposit will become non-refundable, but applicable to the Purchase Price for the first extension of the Due Diligence Period and \$25,000.00 of the Deposit will become non-refundable, but applicable to the Purchase Price for each the second and third extension(s) of the Due Diligence Period. Unless Purchaser terminates the Purchase

Agreement by the end of the Initial Due Diligence Period, the Deposit will become non-refundable to Purchaser, absent any default by Seller.

Purchase Agreement:

The parties anticipate that the terms of the transaction will be set forth in further detail in a more formal Purchase Agreement that will supersede this Letter of Intent. The initial draft of the Purchase Agreement will be prepared by Purchaser's attorney and will reflect the terms contained in this Letter of Intent, as well as other provisions that are normally found in purchase agreements for commercial real estate, including customary factual representations by Seller. Purchaser and Seller shall work in good faith to agree upon and execute a Purchase Agreement within 20 business days following the parties' execution of this Letter of Intent. The Purchase Agreement, with Seller approval, may be assignable by Purchaser provided assignee has the capability and financial wherewithal to complete transaction. Such approval shall not be unreasonably withheld.

Due Diligence:

The Purchaser shall be entitled to a Due Diligence Period of One hundred eighty (180) days from the Effective Date. Upon providing written notice to the Seller the Purchaser shall have the right to extend the the Due Diligence Period as follows:

1st Extension-an additional one (1) one hundred eighty (180) days;

2nd Extension-an additional 90 days; and

3rd Extension-an additional 90 days.

During the Due Diligence Period Purchaser may examine and investigate the Property to determine if all aspects of the Property are acceptable to Purchaser, including, without limitation, the condition of title, including survey matters, the zoning classification of the Property; availability and adequacy of all utilities; availability and receipt of all approvals and permits from the local municipality and all necessary state and federal agencies as required for Purchaser's intended use of the Property; rezoning of the Property or receipt of special land use approval, if necessary, for Purchaser's intended use of the Property; the physical suitability and economic feasibility of the Property for the Purchaser's intended use, including environmental and geo-technical matters and subsurface conditions; and the review of all leases and service contracts, pertaining to the Property. Purchaser's activities may not adversely impact the property.

If Purchaser is not satisfied with the Property, for any reason in its sole discretion, or in the event Purchaser is satisfied with the Property but has been unable to obtain all governmental approvals required to develop the Property for Purchaser's intended use, then Purchaser can cancel the transaction upon written notice to Seller within the Due Diligence Period, whereupon the Purchaser's Earnest Money Deposit will be

refunded in accordance with the terms and conditions of the Earnest Money Deposit section of the Purchase Agreement. Purchaser will immediately restore to property to its original condition and return all shared documents and materials to Seller. Seller will reasonably cooperate with Purchaser, if necessary and at Purchaser's request, sole cost, and direction, in obtaining such governmental approvals.

Title:

Within 14 business days of complete execution of a formal Purchase Agreement, Seller will provide Purchaser with a Commitment for Title Insurance reflecting the current condition of title to the Property. Purchaser shall accept, and not object to such condition, if it only includes (i) taxes, mortgages or other liens for the payment of money that can be satisfied by Seller at Closing and (ii) such other matters as will not preclude or interfere with Purchaser's intended use for the Property (the "Permitted Exceptions"). Purchaser may object to any other title exceptions, in which event, Seller shall use commercially reasonable efforts to cure them, which cure may be a condition to Purchaser's obligation to close the transaction.

Effective Date:

The Effective Date shall be the date that the Purchase Agreement is fully executed. Seller will in good faith and using all practical effort with in five (5) business days of the Effective date provide Purchaser with all documents in Seller's possession pertaining to the Property, including but not limited to: environmental reports, geotechnical reports, existing ALTA, topographical and as-built surveys, architectural and civil drawings, rent roll, operating statements, detailed list of capital expenditures made in the past three years, utility account numbers and vendors and warranty information.

Closing:

The Closing shall take place on a date designated by Purchaser and acceptable to Seller within (30) days after the Due Diligence Period as extended has expired, but no sooner than April 30, 2012. Exclusive possession of the Property shall be delivered to Purchaser at Closing, free and clear of the interests of all tenants and occupants. At the Closing, (i) Seller will execute and deliver a Warranty Deed to the Property, subject only to the Permitted Exceptions, and a No-Lien and FIRPTA Affidavit and (ii) Purchaser will deliver the Purchase Price, as adjusted by the provisions described below. Additionally, Seller shall have the right, upon not less than ninety (90) days prior written notice sent to Purchaser to delay the Closing Date for up to four (4) months' whereby the Closing would not take place sooner than August 30, 2012. In the event that Seller exercises such right, the Closing Date shall be deemed extended for the period of time required by Seller but in all events, Closing shall occur not later than one hundred fifty (150) days following the expiration date of the Due Diligence Period, as extended.

**Closing Adjustments
and Expenses:**

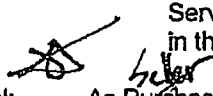
Seller shall furnish and pay for a title commitment and, at closing, an Owner's Title Policy insuring marketable fee simple title in Purchaser (or its assignee) for the amount of the Purchase Price. Seller shall pay all outstanding utilities. Seller shall pay transfer tax and document stamp fees. Purchaser shall pay the fees for recording the Warranty Deed. Purchaser shall pay for the survey. Purchaser shall pay for their own closing fees. All taxes and assessments which have become due and payable prior to Closing on the Property shall be paid by Seller. Current real Property taxes, based upon the latest available tax bills, shall be prorated between the parties as of the Closing. Seller shall pay all special assessments up to the date of Closing. All other closing costs and expenses, if any, shall be determined and paid in accordance with local custom.

Default:

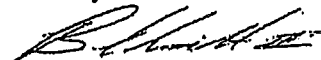
In the event Purchaser defaults by failing to close when required, Seller's sole remedy shall be to demand and receive the Deposit as liquidated damages. In the event Seller defaults, Purchaser's sole remedies shall be (i) to obtain a Judgment for specific performance of Seller's obligation to close or (ii) to terminate the Purchase Agreement, in which event the Deposit shall be refunded and, in addition, Seller shall reimburse Purchaser for all Due Diligence costs and expenses incurred by Purchaser prior to such default by Seller.

Commission:

Pursuant to a separate agreement, Seller shall be responsible at Closing for any real estate commissions payable with this transaction and shall indemnify Purchaser with respect thereto. Additionally both Seller and Purchaser recognize that Summit Commercial representing the Seller and Armada Real Estate Services representing the Purchaser are the only brokers involved in this transaction.


Court Approval: As Purchaser is in rehabilitation, final approval of this transaction is contingent upon receipt of approval of the Ingham County Circuit Court, State of Michigan. Should this offer be acceptable to you, please execute this letter and return to my attention, once received a formal Purchase Agreement that outlines the specific terms and conditions shall be drafted. Please contact me at (248) 798-1075 or smith@summitcommercialllc.com with any questions or concerns.

Sincerely



Benjamin L. Smith
Principal

cc: Jerome Eagger, SC
Bunia Parker, SC

Agreed and Accepted

Agree Development, LLC

(Purchaser)

By: [Signature]
(sign & print name)

Date: 11/12/10

Agreed and Accepted

American Community Mutual Insurance Co.

(Seller)

By: [Signature]
(sign & print name)

Its: Deputy Rehabilitator

Date: 11-10-2010

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LAW OFFICES

LUCY R. BENHAM PLLC

SUITE 204
210 EAST THIRD STREET
ROYAL OAK, MICHIGAN 48067

TELEPHONE (248) 414-5840
FACSIMILE (248) 414-5842

LUCY R. BENHAM

November 18, 2010

Via E-Mail

Jim Gerber
American Community Mutual Insurance Corporation
39201 Seven Mile Road
Livonia, MI 48152
E-mail: JGerber@American-Community.com

Re: Sale of 39201 Seven Mile Road Property

Dear Jim:

Thank you for selecting our firm to perform legal services for you in connection with the sale of the property located at 39201 Seven Mile Road. You have asked me to review the purchase documents and, if requested, attend the closing. We look forward to working with you.

We will represent you and provide legal services in a timely fashion. We will provide you with copies of all papers that we prepare and review (other than internal memoranda and notes).

You agree to cooperate with us and to provide, in a timely fashion, all information known and available to you that may help us represent you.

You will provide nonpublic personal information to us, and we may request additional information in the future. We are required by law to inform you of our policies regarding privacy of client information. Lawyers have been and continue to be bound by professional standards of confidentiality that are even more stringent than those required by law. Therefore, we have always protected our clients' right to privacy. We do not disclose any nonpublic personal information obtained in the course of representing you to persons outside our firm except as required by law (for example, disclosing a Social Security number on a tax return) or as expressly permitted by you. We retain records relating to the services we provide to you. To protect those records we maintain physical, electronic, and procedural safeguards that comply with our professional standards and the law.

*Letter to Jim Gerber
November 18, 2010
Page 2*

We will bill you for our services on an hourly basis for the time that we spend on your matter, including travel time. The following hourly rates currently apply but may be increased by us without prior notice to you:

Attorneys	\$295.00 per hour
Legal assistants/Law Clerks	\$ 75.00 per hour

The time recorded by the above persons will be billed in increments of quarter of an hour (15 minutes).

I will be the primary attorney responsible for this matter; my current hourly billing rate is \$295.00.

We will also bill you for out-of-pocket expenses, such as filing fees, travel expenses, recording and certification fees, computerized legal research, courier services, photocopying (including photocopying of our file if you request a copy), postage, facsimile transmission, long distance telephone charges, and similar items. These items appear separately from the hourly charges and are referred to as *costs* on our statements. The amounts charged for costs are subject to periodic adjustments. Attached is a sheet showing the current charges for these items.

We will provide you with a monthly itemized statement of services and costs to be paid in full within 20 days after you receive the statement. We reserve the right to suspend our legal services if you fail to pay our fees and costs in a timely manner. If you do experience a problem regarding on-time payment, please contact us to arrange a mutually satisfactory alternate arrangement.

You may terminate this agreement at any time by giving us written notice. We may terminate this agreement at any time by giving you at least 15 days' written notice. In either case, we retain the right to collect all outstanding fees and costs at the time of termination.

We may destroy our file, without any further notice to you, after 10 years from the termination of our services or 10 years after the completion of this matter, whichever occurs first.

If these terms are acceptable to you, please date and sign the extra copy of this letter and return it to us.

Letter to Jim Gerber
November 18, 2010
Page 3

If you should have any questions concerning this letter or any statement that you receive from us, please contact us promptly so that the matter can be resolved to our mutual satisfaction.

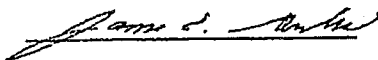
Very truly yours.

LUCY R. BENHAM PLLC


Lucy R. Benham

LRB
Enclosures

The terms of this letter are acceptable.



Dated: 11/18/2010

Client Costs

<i>Item</i>	<i>Cost</i>
Photocopies	\$.10/page
Outgoing facsimile	\$1.00 per page

You will be billed the actual amount invoiced to the firm for such items as Express Mail/Overnight Service, online legal research, long-distance telephone charges, postage, outside couriers, travel-related expenses, conference call charges, and charges for administrative agency and court-related services, such as filing fees and transcription services.

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LUCY R. BENHAM
Lucy R. Benham PLLC
210 East Third Street, Suite 204
Royal Oak, MI 48067
(248) 414-5840
Lucy@lrblaw.com

EDUCATION:

1983	Bachelors of General Studies, University of Michigan
1986	Juris Doctor, Cum Laude, Wayne State University Law School
2002	Associate in Risk Management, Insurance Institute of America

CAREER HISTORY:

October 1, 2009 to present: Established Lucy R. Benham PLLC

May 1, 2008 to September 30, 2009: Zausmer, Kaufman, August, Caldwell & Tayler, P.C.

March 1998 to April 30, 2008: Founding Member Goldberg and Benham, PLC

February 1986 to March 1998: Keywell and Rosenfeld PC
Associate 1986-1992; Shareholder 1992-1998

June 2005 to present: Adjunct Associate Professor, Walsh College
MBA 556 "Legal Issues in Management"

AREAS OF PRACTICE:

Transactional/Business Law: Formation of entities (Corporations, Limited Liability Companies, Partnerships, Joint Ventures). Structuring, negotiation and documentation of commercial transactions including the sale, purchase and merger of businesses. Preparation of Buy-Sell and Stock Redemption Agreements. Preparation of employment and independent contractor agreements. Contract review and negotiation.

Real Estate Transactions: Commercial and residential sales and purchase transactions. Commercial and residential lease preparation, negotiation and review. Assisting clients in Due Diligence. Drafting and negotiation of transaction documents.

Estate Planning and Probate: Preparation of Wills, Trusts and related documents. Preparation and negotiation of Pre & Post Nuptial agreements. Estate Tax planning; Probate and Trust Administration. Conducted numerous presentations and seminars in Estate Planning.

CURRENT AFFILIATIONS:

Member, State Bar of Michigan
Member, Women Impacting Public Policy, Inc., a Michigan nonprofit organization
Director, Sky Foundation, Inc., a Michigan nonprofit organization
Member, National Association of Women Business Owners since 1988. Served at various times as Officer and Board Member. Past President of Greater Detroit Chapter
Hearing Panelist, Michigan Attorney Discipline Board
Member, Commercial Real Estate Development & Ownership Committee/Real Property Law Section
State Bar of Michigan
Treasurer, Village Club

PAST AFFILIATIONS:

Founding member & Past President of Board of Directors of Forgotten Harvest, Inc., a Michigan nonprofit organization
Member, Board of Directors of the Girl Scouts of Metro Detroit (2002-2004)

